

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36085

STATE OF IDAHO,	)	2009 Unpublished Opinion No. 675
	)	
Plaintiff-Respondent,	)	Filed: November 16, 2009
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
HUGO FREDERICK KERNS, JR.,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fifth Judicial District, State of Idaho, Minidoka County. Hon. R. Barry Wood, District Judge.

Judgment of conviction and unified sentence of fifteen years, with three years determinate, for first degree arson, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Stephen D. Thompson, Ketchum, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jennifer E. Birken, Deputy Attorney General, Boise, for respondent.

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Before LANSING, Chief Judge, GUTIERREZ, Judge  
and GRATTON, Judge

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PER CURIAM

Hugo Frederick Kerns, Jr. was charged with and pled guilty to first degree arson, Idaho Code § 18-802(1), and was sentenced to a unified term of fifteen years, with three years determinate. Kerns was also ordered to pay restitution in the amount of \$78,000.<sup>1</sup> Kerns filed an Idaho Criminal Rule 35 motion for reduction of sentence, which the district court denied. Kerns

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<sup>1</sup> For the first time, in his reply brief, Kerns argues the district court abused its discretion by awarding restitution. Issues raised for the first time in a reply brief will not be considered as it denies the opposing party an opportunity to brief the matter. Therefore, we do not address Kerns' restitution argument. *State v. Gamble*, 146 Idaho 331, 336, 193 P.3d 878, 883 (Ct. App. 2008).

appeals, contending that the district court abused its discretion by imposing an excessive sentence and by denying his Rule 35 motion.

Where a sentence is within the statutory limits, it will not be disturbed on appeal absent an abuse of the sentencing court's discretion. *State v. Hedger*, 115 Idaho 598, 604, 768 P.2d 1331, 1337 (1989). We will not conclude on review that the sentencing court abused its discretion unless the sentence is unreasonable under the facts of the case. *State v. Brown*, 121 Idaho 385, 393, 825 P.2d 482, 490 (1992). In evaluating the reasonableness of a sentence, we consider the nature of the offense and the character of the offender, applying our well-established standards of review. See *State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 170 P.3d 387 (2007).

A Rule 35 motion is a request for leniency which is addressed to the sound discretion of the sentencing court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007).

Applying the foregoing standards and having reviewed the record, we conclude that the district court did not abuse its discretion by imposing Kerns' sentence and by denying his Rule 35 motion for reduction of sentence. Accordingly, Kerns' judgment of conviction and sentence are affirmed, as is the denial of his Rule 35 motion.